

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

TYRONE WOOLASTON,

Defendant/Movant.

23-CV-9153 (VEC)

18-CR-212 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

On October 16, 2023, *pro se* Defendant/Movant Tyrone Woolaston filed a motion to vacate, set aside, or correct his conviction and sentence pursuant to 28 U.S.C. § 2255. Mr. Woolaston challenges his conviction for narcotics conspiracy, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(A), and brandishing a firearm in furtherance of that conspiracy, in violation of 18 U.S.C. § 924(c). On August 22, 2024, Magistrate Judge Lehrburger issued a report and recommendation (the “R&R”) recommending that the motion be denied. No objections to the R&R were filed.¹ For the following reasons, the motion is DENIED.

DISCUSSION

In reviewing a report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). When, as here, no party objects to the Magistrate Judge’s report and recommendation, the court may accept the report and recommendation provided that “there is no clear error on the face of the record.” *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y.

¹ In a letter dated September 4, 2024, Mr. Woolaston attempted to appeal the R&R to the U.S. Court of Appeals for the Second Circuit. Dkt. 211. In addition to being procedurally improper, Mr. Woolaston’s attempted appeal—which contains no explanation of the rationale for appeal—is not a substitute for filing objections with this Court. As explicitly stated in the R&R, and as set forth in 28 U.S.C. § 636(b)(1) and Rules 72(b)(2), 6(a), and 6(d) of the Federal Rules of Civil Procedure, objections to an R&R must be filed with the District Court Judge within fourteen days of its issuance. Failure to file timely objections results in a waiver of the right to object and precludes appellate review.

1985); Fed. R. Civ. P. 72(b) advisory committee's note. Under a clear error standard of review, “[s]o long as there is a basis in the evidence for a challenged inference, [the court] do[es] not question whether a different inference was available or more likely.” *United States v. Freeman*, 443 F. App'x 664, 666 (2d Cir. 2011) (quoting *Siewe v. Gonzales*, 480 F.3d 160, 168 (2d Cir. 2007)).

Careful review of the R&R reveals that there is no clear error. The Court agrees with Magistrate Judge Lehrburger that Mr. Woolaston has failed to raise any non-speculative, non-conclusory factual or legal argument that would entitle him to relief with respect to any of his eight claims of ineffective assistance of counsel.

CONCLUSION

Because Mr. Woolaston filed no written objections to the R&R and because the R&R expressly warned that the failure to file timely objections may result in the waiver of any such objections, appellate review of this decision is precluded. *See* Fed. R. Civ. P. 72; *Cidor v. Onondaga County*, 517 F.3d 601, 603–04 (2d Cir. 2008). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this ruling would not be taken in good faith. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

The Clerk of the Court is respectfully directed to mail a copy of this Order to Mr. Woolaston and to note service on the docket. The Clerk of the Court is further directed to terminate the case.

SO ORDERED.

Date: October 1, 2024
New York, NY

Valerie Caproni

VALERIE CAPRONI
United States District Judge